IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 546 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAILASH PANALAL RATHI - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MR. B.B.NAIK for M/S TRIVEDI & GUPTA for Applicant(s) : 1,
MR. H.M.PRACHHAK, APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
Date : 28/09/2005

ORAL JUDGMENT

1. **RULE**. Mr. H.M.Prachhak, learned APP appears and waives service of notice of Rule on behalf of respondent-State of Gujarat.

2. By filing instant criminal Criminal Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the petitioner/original first informant seeks to challenge the order dated 11.7.2005 by which non-bailable warrant came to be issued against the

petitioner and also the order dated 13.7.2005 by which the prayer to supply certified copy of the proceedings of Sessions Case No. 343 of 1999, wherein the order of issuance of non-bailable warrant is recorded by the learned Additional Sessions Judge, Junagadh at Veraval, has been rejected.

3. On 21.4.1997, the petitioner lodged an FIR with Sutrapada Police Station for commission of the offences punishable under Section 307, 364, 323, 504, 506(2) and 114 of the IPC and under Section 135 of the Bombay Police Act ('the Act' for short). The said FIR came to be registered vide CR No. I-0025 of 1997 at Sutrapada Police Station. On registration of the FIR, investigation was put into motion and during the course of investigation evidence was divulged against the accused. Chargesheet came to be filed against three accused persons on 8.7.1997 in the Court of learned JMFC, Veraval.

4. Since the offence alleged in the charge sheet are exclusively triable by a Court of Sessions, the learned JMFC, Veraval was pleased to commit the same to the Court of learned Additional Sessions Judge, Veraval and the same was registered as Sessions Case no. 343 of 1999.

5. On 28.3.2005 the learned Additional Sessions Judge, Veraval was pleased to frame charge of the offences punishable under Sections 307, 564, 323, 504(2) and 114 of IPC and also under Section 135 of the Act against accused nos. 1 and 2 whereas charge for offence under Sections 323, 504, 506(2) and 114 of the IPC and also under Section 135 of the Act against accused no.3. The

accused pleased not guilty to the said charge and therefore they were put on trial. Sessions Case No. 343 of 1999 was fixed for recording of evidence on 13.6.2005. But due to some unavoidable reasons and more particularly since the petitioner was at that time staying and discharging his duties at Ahmedabad, he could not remain present before the Court of learned Sessions Judge, Veraval and the matter was adjourned to 27.6.2005.

6. Summons were issued to the witnesses including the petitioner for remaining present on 27.6.2005 and the summons of the petitioner was sent to the factory premises of the Gujarat Heavy Chemical Limited at Sutrapada which was served at the office of the GHCL on 24.6.2005. Since the petitioner was not there the concerned officer of the GHCL by report dated 24.6.2005 informed the Police Sub-Inspector, Sutrapada Police Station that the petitioner is staying at Ahmedabad and also that the petitioner was busy at Amraiwati in the State of Maharashtra in connection with the marriage of his niece. The matte was therefore adjourned to 11.7.2005. Again summons came to be issued against the petitioner directing him to remain present in the Court of the learned Additional Sessions Judge, Veraval on 11.7.2005 with other witnesses.

7. Fresh summons were issued at the address of the GHCL, Sutrapada, which was received by the office of the GHCL on 9.7.2005 and on the same day the office of the GHCL sent a report to the Police Sub-Inspector, Sutrapada Police Station, informing him that the petitioner is not well and he is advised rest by the Doctor and a

medical certificate issued by Dr. Bharat Mirani on 6.7.2005 was also forwarded. Though the said report made by the officer of the GHCL on 9.7.2005 along with the medical certificate issued by Doctor were produced before the learned Additional Sessions Judge, Veraval, at the time of hearing of Sessions Case no. 343 of 1999 on 11.7.2005, the learned Additional Sessions Judge directed issuance of non-bailable warrant against the petitioner. Thereafter the matter was adjourned to 25.7.2005. On 12.7.2005 an application was submitted on behalf of the petitioner for obtaining certified copies of the proceedings. The trial Court partly allowed the same application for supply of the certified copies of the FIR and charge sheet and rejected the application for supply of certified copies of the proceedings, wherein the impugned order of issuance of non-bailable warrant is recorded. Thereupon an application was also submitted on behalf of the petitioner requesting the trial Court to supply certified copies of the application made by and on behalf of the petitioner on 12.7.2005 for obtaining certified copies of the proceedings of the case, FIR, charge sheet, affidavit of the petitioner and the impugned order passed thereon. The said application was rejected by the learned Additional Sessions Judge, Veraval by order dated 14.7.2005. Therefore, issuing non-bailable warrant against the petitioner has given rise to this present petition at the instance of the original informant of CR No. I-002/1997.

8. Mr. B.B.Naik, learned advocate of the petitioner contended that the attitude of the learned Additional Sessions Judge in issuance of non-bailable warrant and

thereafter not supplying the copy of the order is absolutely perverse, arbitrary and against all cannons of the criminal jurisprudence. The attitude on the part of the learned Sessions Judge is absolutely callous which is required to be condemned by this Court by quashing and setting aside both the orders. He, therefore urged that the petition is required to be allowed and thereby to quash and set aside both the orders.

9. Mr. H.M.Prachhak,learned APP for the respondent-State of Gujarat submitted that looking the attitude and the way in which the learned Additional Sessions Judge acted, appropriate order of setting aside the issuance of non-bailable warrant may be passed. He, therefore, urged to pass appropriate orders.

10. So far as the factual matrix is concerned, there is no dispute that the petitioner is the first informant who has lodged the FIR for commission of the offences against the persons named in the FIR. Therefore, his evidence is required to be recorded. The petitioner was served at his factory premises at Sutrapada. The concerned officer at Sutrapada has informed the Police Officer that the petitioner is serving at Ahmedabad. However the learned Additional Sessions Judge did not care to issue summons at the first instance at the office of the petitioner at Ahmedabad of which the address was also supplied by the Sutrapada office where the factory premises is situated. It is also not in dispute that though the learned Additional Sessions Judge issued summons at the factory premises at Sutrapada, the petitioner was informed about the

issuance of summons by the learned Additional Sessions Judge and the petitioner has also in turn sought the time on the ground mentioned in the application. On last occasion the petitioner was sick therefore he could not remain present before the Court. The office of the GHCL on 9.7.2005 and on the same day the office of the GHCL sent a report to the Police Sub-Inspector, Sutrapada Police Station, informing him that the petitioner is not well and he is advised rest by the Doctor and a medical certificate issued by Dr. Bharat Mirani on 6.7.2005 was also forwarded. Though the said report made by the officer of the GHCL on 9.7.2005 along with the medical certificate issued by Doctor were produced before the learned Additional Sessions Judge, Veraval, at the time of hearing of Sessions Case no. 343 of 1999 on 11.7.2005, the learned Additional Sessions Judge directed issuance of non-bailable warrant against the petitioner. Therefore, the learned Additional Sessions Judge was very much aware that the petitioner was sick at Ahmedabad. However he has issued non-bailable warrant. The learned Additional Sessions Judge ought to have appreciated that the petitioner is the first informant of the crime register against the three accused therefore his presence would be required on behalf of the prosecution to prove the charges against accused. Therefore, the learned Additional Sessions Judge ought to have appreciated that the petitioner did not remain absent or did not honour the summons intentionally. He could not remain present on account of his personal cause and illness. Therefore, according to this Court the action of the learned Additional Sessions Judge in issuance of non-

bailable warrant to the first informant is highly condemnable and does not stand to scrutiny at all. The matter did not rest there. The learned Additional Sessions Judge did not supply the copy of the said order of issuance of non-bailable warrant though the petitioner has filed an application to obtain certified copy of the said order. The learned Additional Sessions Judge ought to have understood that by issuance of non-bailable warrant, the petitioner is aggrieved and therefore, if he wants to avail the remedy from the higher forum he has to obtain certified copy and attach with the proceedings which he is propose to initiate in the higher forum.

11. In aforesaid view of the matter, both the orders passed by the learned Additional Sessions Judge, which are not in good taste, and condemnable by this Court, deserve to be quashed and set aside by allowing this revision petition, in exercise of powers conferred under Section 397 of the Code.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 11.7.2005 by which the non-bailable warrant came to be issued is hereby quashed and set aside. The learned Additional Sessions Judge is hereby directed to supply the certified copy of the issuance of non-bailable warrant immediately so that the petitioner can annex the said certified copy in this petition. Rule is made absolute.

(A.M.Kapadia,J)

Jayanti*